



Fast Track Proposed Regulation Agency Background Document

Agency name	Virginia Dept. of Transportation (Commonwealth Transportation Board)
Virginia Administrative Code (VAC) citation	24 VAC 30-21 and 24 VAC 30-20
Regulation title	<i>General Rules and Regulations of the Commonwealth Transportation Board</i>
Action title	Repeal of Existing General Rules and Promulgation of New Regulation Under Same Title
Date this document prepared	October 19, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

This action replaces an existing regulation, *General Rules and Regulations of the Commonwealth Transportation Board* (24 VAC 30-20) (hereafter referred to as the existing *General Rules*) with a new regulation of the same title but a different Virginia Administrative Code number, 24 VAC 30-21 ("new *General Rules*"). The existing *General Rules* were promulgated to set forth the conditions under which the Virginia Department of Transportation (VDOT), on behalf of the Commonwealth Transportation Board (CTB), will grant permits for performing work on state-owned property controlled by the CTB. The existing regulation also specifies permitted and prohibited activities on state-owned right of way.

The new *General Rules* update items such as statutory references and eliminate provisions that are duplicative of provisions in other regulations. References to two regulations, the *Land Use Permit Manual* (LUPM) and the *Minimum Standards of Entrances to State Highways* ("*Minimum Standards*") have also been removed. VDOT is promulgating a replacement regulation for the LUPM, the *Land Use Permit Regulations* (LUPR), and has promulgated two regulations that supersede the *Minimum Standards*, *Access Management Regulations: Principal Arterials* (24 VAC 30-72) and *Access Management*

Regulations: Minor Arterials, Collectors, and Local Streets (24 VAC 30-73). As a result of these actions, the existing *General Rules* are outdated.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On October 15, 2009, the Commonwealth Transportation Board repealed the *General Rules and Regulations of the Commonwealth Transportation Board (24 VAC 30-20)* and promulgated the replacement regulation under the same title but a different VAC number (24 VAC 30-21).

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

The statutory authority cited for the existing *General Rules* is § 33.1-12 (3) of the *Code of Virginia*: "to make rules and regulations, from time to time, not in conflict with the laws of the Commonwealth, for the protection of and covering traffic on and the use of systems of state highways and to add to, amend or repeal the same." This authority also applies to the new *General Rules*. There are other sections of the *Code* that confer authority on the CTB, Commonwealth Transportation Commissioner (Commissioner), or VDOT to promulgate regulations for specific purposes, such as the regulation of entrances and the issuance of highway design standards, but § 33.1-12 (3) confers upon the CTB broad general authority at its discretion to promulgate regulations affecting transportation on the state highway system within the current framework of state statutes.

Except for minor amendments made in 1995 associated with the Registrar's regulatory format requirements and General Assembly actions which affected regulatory text, the existing *General Rules* have not been significantly changed since 1974. CTB records indicate that rules and regulations of this type date to the beginning of the state highway system; the General Assembly established the first such system in 1918, and the State Highway Commission, predecessor to the CTB, approved rules and regulations concerning traffic on May 25, 1920. These regulations addressed general restrictions on vehicle weight and type and established speed limits, in addition to addressing the issuance of special permits for the use of state highways. Since that time, the *General Rules* have been amended to focus on land use and regulation of commercial and private entrances.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The CTB, VDOT, and the Commissioner have all been involved in promulgating or amending a variety of regulations concerning land use and regulation of entrances in recent years. In particular, major initiatives mandated by the General Assembly have affected the content of the existing *General Rules*.

Chapters 863 and 928 of the Acts of Assembly of 2007 (HB2228 and SB1312, respectively) amended §§ 33.1-13, 33.1-198 and 33.1-199 of the *Code of Virginia*, and added § 33.1-198.1 to the *Code of Virginia*. The legislation requires the Commissioner to develop comprehensive highway access management regulations and standards to preserve and improve the efficient operations of the state systems of highways. The regulations and design standards are to be used to manage the location, number, and spacing and design of entrances and intersections, including median openings, turn lanes, traffic signals, and interchanges on the systems of state highways.

Two bills were introduced in the 2008 General Assembly session which addressed VDOT’s promulgation of these access management regulations. Chapters 274 and 454 (2008) amended the enactment clauses of Chapters 863 and 928 of the Acts of Assembly of 2007 to provide for the access management regulations to be promulgated in phases. The first phase, which resulted in the promulgation of *Access Management Regulations: Principal Arterials*, which went into effect July 1, 2008, was exempted from the requirements of the Administrative Process Act (APA). The subsequent phase, which resulted in the promulgation of *Access Management Regulations: Minor Arterials, Collectors, and Local Streets*, which went into effect October 14, 2009, was subject to the APA.

Promulgation of the two phases of the access management standards affect the content of the new *Land Use Permit Regulations* (LUPR), intended to replace the existing LUPM, and the *Minimum Standards*, both of which address in detail the regulation of entrances. An entire part of the LUPM and all of the *Minimum Standards* have become obsolete. Because the existing *General Rules* reference the LUPM and the *Minimum Standards*, an amendment (or replacement) of that regulation is necessary. Based on the fundamental changes to how land use and entrances are to be regulated, and the fact that the existing *General Rules* have been virtually unchanged since 1974, VDOT believes it is necessary to update the provisions of the *General Rules* to reflect these changes. Furthermore, due to comprehensive extent and nature of the changes, VDOT believes it is appropriate to repeal the existing *General Rules* and promulgate a new regulation.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The *Access Management Regulations: Minor Arterials, Collectors, and Local Streets* have been promulgated in accordance with the requirements of the APA. Repeal of the LUPM and promulgation of the LUPR have been approved by the CTB, and these actions are being implemented in accordance with the APA, including the provisions of Article 2, which mandate a lengthy Executive Branch review process. As part of the regulatory process, VDOT has provided for public comment and public discussion of significant issues relating to the subjects of land use, regulation of entrances, and access management. Because these issues and public concerns have already been addressed, VDOT does not believe that the repeal of the existing *General Rules* and the promulgation of the new *General Rules* will be controversial.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The new *General Rules* retain the same overall framework of the existing *General Rules*, but have updated material on the permit process and regulation of entrances and exclude material addressed in greater detail in other regulations, such as penalties for violations.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

1) Primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions: The public will benefit from having obsolete or redundant provisions removed from the new regulation because the chance of confusion will be minimized. There are no disadvantages to the public when regulations are clear, accurate and up-to-date.

2) Primary advantages and disadvantages to the agency or the Commonwealth: The Commonwealth will also benefit from having obsolete or redundant provisions removed from the new regulation because the regulatory text will be concise and more clearly understood. There are no disadvantages to the Commonwealth when regulations are clear, accurate and up-to-date.

3) Pertinent matters of interest to the regulated community, government officials, and the public: The regulated community will find that the relationship between the new *General Rules* and related regulations has not changed: overall policy is addressed in the new *General Rules*, just as in the existing *General Rules*, but specific regulatory provisions concerning land use and access to CTB-controlled rights-of-way are addressed in dedicated regulations, where more detail can be provided. The only difference is that the new *General Rules* have been updated and streamlined to remove obsolete and redundant provisions.

VDOT believes there are no disadvantages to the public or the Commonwealth associated with this regulatory action.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements associated with this particular regulatory action.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

Since the new *General Rules* affect activities occurring on all rights-of-way of highways under the jurisdiction of the CTB, no locality will be particularly affected by this regulatory action.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

1) Establishment of less stringent compliance or reporting requirements: The new *General Rules* provide that, where practicable, VDOT regulations shall allow the alternative of submitting any documents or payments by electronic means, pursuant to the provisions of Chapter 85 of the 2009 Acts of Assembly.

2) Establishment of less stringent schedules or deadlines for compliance or reporting requirements: The new *General Rules* do not set out any schedules or deadlines for compliance or reporting requirements.

3) Consolidation or simplification of compliance or reporting requirements: The new *General Rules* do not consolidate or simplify compliance, since the purpose of the regulatory action is to update general regulatory provisions to accommodate the recently-promulgated regulations, mandated by the General Assembly, concerning entrances to state highways, as well as updates to VDOT's land use permit regulations.

4) Establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation: The new *General Rules* do not establish performance standards or design or operational standards.

5) Exemption of small businesses from all or any part of the requirements contained in the proposed regulation: The new *General Rules* do not themselves exempt small businesses from all or any part of the requirements contained in the proposed regulation. Because the requirements are designed to ensure public safety, creating exemptions to the requirements would not be in the public interest. However, applicable VDOT regulations do provide appeals processes for the regulated parties to seek waivers or exceptions when warranted by special circumstances.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Neither the new nor the existing *General Rules* themselves impose an economic impact, in the sense that they impose a reporting requirement or impose a fee; they merely outline overall policy concerning activities occurring on CTB-controlled rights-of-way.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	None.																		
Projected cost of the regulation on localities	None.																		
Description of the individuals, businesses or other entities likely to be affected by the regulation	Individuals, businesses, and other entities performing work or participating in permitted activities on state-owned property controlled by the CTB.																		
Agency's best estimate of the number of such entities that will be affected	<p>Historical data suggest that, on average, approximately 14,000 permits are issued in a given year, but this figure is affected by many variables, such as availability of credit, the overall business climate, and legal/regulatory issues. Many businesses obtain more than one permit so the number of affected entities would be less than the number of permits.</p> <p>Permit information by type issued is shown below for the last two fiscal years:</p> <table style="margin-left: 40px;"> <thead> <tr> <th style="text-align: left;"><u>Land Use Permits</u></th> <th style="text-align: right;"><u>FY2008</u></th> <th style="text-align: right;"><u>FY2009</u></th> </tr> </thead> <tbody> <tr> <td>Private Entrance Permits</td> <td style="text-align: right;">2,604</td> <td style="text-align: right;">1,813</td> </tr> <tr> <td>Commercial Entrance Permits</td> <td style="text-align: right;">1,018</td> <td style="text-align: right;">729</td> </tr> <tr> <td>Utility Permits</td> <td style="text-align: right;">8,222</td> <td style="text-align: right;">7,063</td> </tr> <tr> <td><u>Other Permits</u></td> <td style="text-align: right;"><u>2,591</u></td> <td style="text-align: right;"><u>1,547</u></td> </tr> <tr> <td>Total Permits</td> <td style="text-align: right;">14,435</td> <td style="text-align: right;">11,152</td> </tr> </tbody> </table> <p style="margin-left: 40px;">Fees Collected \$2,279,871 \$487,590</p>	<u>Land Use Permits</u>	<u>FY2008</u>	<u>FY2009</u>	Private Entrance Permits	2,604	1,813	Commercial Entrance Permits	1,018	729	Utility Permits	8,222	7,063	<u>Other Permits</u>	<u>2,591</u>	<u>1,547</u>	Total Permits	14,435	11,152
<u>Land Use Permits</u>	<u>FY2008</u>	<u>FY2009</u>																	
Private Entrance Permits	2,604	1,813																	
Commercial Entrance Permits	1,018	729																	
Utility Permits	8,222	7,063																	
<u>Other Permits</u>	<u>2,591</u>	<u>1,547</u>																	
Total Permits	14,435	11,152																	
Projected cost of the regulation for affected individuals, businesses, or other entities	Neither the existing nor the replacement regulation imposes fees.																		

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The CTB is granted general authority to make regulations under subsection 3 of § 33.1-12 of the *Code of Virginia*. Therefore, the legislature clearly intended the CTB to exercise this authority with respect to transportation. For example, it is reasonable and appropriate for the CTB to regulate the activities that occur on highway rights-of-way under its jurisdiction through the land use permit framework. It is also reasonable and appropriate for the CTB to establish rules concerning the use of highway rights-of-way. Both of these situations involve the safety of the traveling public, cargo carriers, anyone performing work on the highways or adjacent areas, as well as the integrity and soundness of the highway network itself. Under the general provisions established by this regulation, the CTB (or VDOT, on behalf of the CTB) has issued more detailed regulations concerning land use, access management, and administration of facilities such as parking lots, waysides, and rest areas.

Based on these factors, there is no alternative to meet the essential purpose of the action, which is to preserve the integrity of the state system of highways, as well as to facilitate the safe and convenient transportation of goods and people.

The new *General Rules* do not directly address less intrusive or less costly alternatives for small businesses. However, they do include a provision directing VDOT to allow for the submission of documents and payment electronically, if practicable. This provision should be less costly to any regulated party, including small businesses.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action will have no effect on the items listed above.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

The chart below compares the content of the existing *General Rules* with the new *General Rules*:

Existing General Rules section number	New General Rules section number, if applicable	Current requirement	Proposed change and rationale
10	10	Defines terms pertinent to the regulation	New <i>General Rules</i> update terms consistent with usage in other new regulations, such as "Commissioner," and adds others, such as "VDOT."
20	20	Establishes requirement that work performed on real property of the CTB be subject to written permission in the form of a permit	New § 20 updates general provisions concerning authority to issue permits and the designation of the source for specific land use permit requirements, and adds provisions currently found in separate sections of the existing <i>General Rules</i> , such as those concerning the need for applicants to comply with applicable VDOT manuals (regulations), waivers for damage or liability requirements, and relocation of structures.
30	N/A	Briefly discusses permit authority and application procedure	Removes outdated provisions; includes more detail on types of permits and agreements, general rules and requirements, penalties for violations, appeals, etc.
40	N/A	Establishes authority of CTB or Commissioner concerning denial and revocation of permit	Removes outdated provision; includes more detail on grounds for denial or revocation, penalties for violation of water quality permits, etc.
50	20	Discusses requirement that permit applicants must comply with terms of the <i>Land Use Permit Manual</i> and the <i>Minimum Standards of Entrances to State Highways</i> , as applicable. CTB must adopt or ratify changes to these documents	Updated provision included in new <i>General Rules</i> as § 20 B; regulations not listed by name to minimize need to revise list when regulations are promulgated, amended, or repealed; because authority to promulgate recent regulations affecting interrelated subjects such as traffic analysis, land use, access management, etc. is not consistently fixed with the CTB, the requirement that the CTB adopt or ratify changes to regulations has been eliminated.

Existing <i>General Rules</i> section number	New <i>General Rules</i> section number, if applicable	Current requirement	Proposed change and rationale
60	20	Establishes requirement that applicants indemnify and save harmless the CTB, Commonwealth, VDOT, etc., from responsibility, damage, or liability arising from a permit	Updated provision included in new <i>General Rules</i> as § 20 C.
70	20	Requires relocation of structure placed on or in CTB right-of-way under terms of a permit when ordered by Commissioner; cost is at no expense to Commonwealth unless the Department agrees	Updated provision included in § 20 D of new <i>General Rules</i> ; "VDOT" substituted for "board" and "Commissioner" to be consistent with usage in other regulations.
80	30	States that no person, firm, or corporation shall use of occupy highway right of way for purposes other than travel except as authorized by permit	Updated provision included in § 30 A of new <i>General Rules</i> .
90	30	Discusses activities occurring on bridges	Updated provision included in § 30 B of new <i>General Rules</i> .
100	30	Discusses use or abuse of real or personal property on state-owned right of way	Updated provision included in § 30 C of new <i>General Rules</i> .
110	N/A	Discusses placement of mail boxes and newspaper boxes as covered in the department's <i>Land Use Permit Manual</i>	Removes outdated and redundant provisions that appear in other regulations.
120	30	Discusses prohibitions on allowing water to flow on state-owned right of way	Updated provision included in § 30 D of new <i>General Rules</i> ; removes redundant provisions that appear in other regulations.
130	N/A	Discusses placement of roads, railroads, of tracks on state highway system as covered in the department's <i>Land Use Permit Manual</i>	Updated provision now appears in new <i>General Rules</i> as § 30 E. Removes redundant provisions related to placement of railroads and placement of roads for special purposes such as accommodation of a farm pond dam that appear in other regulations.
140	N/A	Discusses status of parking, picnic, or recreational areas as part of the state highway system, and related prohibited activities at these sites	Permitted and prohibited activities at these facilities set out in greater detail in <i>Rules and Regulations for the Administration of Waysides and Rest Areas</i> (24 VAC 30-50) and <i>Rules and Regulations for the Administration of Parking Lots and Environs</i> (24 VAC 30-100).

Existing <i>General Rules</i> section number	New <i>General Rules</i> section number, if applicable	Current requirement	Proposed change and rationale
150	40	Addresses statutory and regulatory authority under which the CTB and the Commissioner regulate entrances	Updated to include new statutory amendments and related authorities to regulate entrances. Topic covered in greater detail in <i>Access Management Regulations: Principal Arterials</i> (24 VAC 30-72) and <i>Access Management Regulations: Minor Arterials, Collectors, and Local Streets</i> (24 VAC 30-73).
160	N/A	Addresses owner's liability for expenses associated with removal of prohibited objects	Removes redundant provision that appears in another regulation.
170	50	Establishes rules for placement of airport or helicopter facilities	No changes from existing provisions.
180	N/A	Refers to penalties for violations that are set out in § 33.1-19 of the Code of Virginia	Penalties for violations are referenced in separate regulations in addition to statute, so they were eliminated from the new <i>General Rules</i> .
N/A	60	Concerns submission of documents or payment by electronic means	Requires that VDOT's regulations offer the alternative of submitting documents or payment by electronic means if practicable to satisfy provisions of Chapter 85 of the 2009 Acts of Assembly.